

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 U.S. ETHERNET INNOVATIONS, LLC,

No. C 10-3724 CW

5 Plaintiff,

ORDER DENYING  
MOTION TO ALTER OR  
AMEND SUMMARY  
JUDGMENT ORDER

6 v.

7 ACER, INC., et al.,

(Docket No. 1344)

8 Defendants,

9 and

10 AHEROS COMMUNICATIONS, INC., et  
al.,

11 Intervenors.

12  
13 U.S. ETHERNET INNOVATIONS, LLC,

No. C 10-5254 CW

14 Plaintiff,

ORDER DENYING  
MOTION TO ALTER OR  
AMEND SUMMARY  
JUDGMENT ORDER

15 v.

16 AT&T MOBILITY, LLC, et al.,

(Docket No. 591)

17 Defendants.

18  
19 Plaintiff U.S. Ethernet Innovations, LLC (USEI) moves to  
20 alter or amend the Court's November 7, 2014 Summary Judgment  
21 Order. (Case No. 10-3724, Docket No. 1344; Case No. 10-5254,  
22 Docket No. 591). It argues that (1) Defendants and Intervenors  
23 are collaterally estopped from litigating the validity of the  
24 asserted claims of the '872 and '094 patents and (2) the Court  
25 committed clear error when it found in favor of Defendants and  
26 Intervenors with regard to the non-infringement of claims 1 and 13  
27  
28

1 of the '313 patent. Defendants and Intervenors oppose the motion.  
2 For the reasons stated below, the Court DENIES the motion.

3 BACKGROUND

4 The facts in this case are summarized in the Court's November  
5 7, 2014 Order on Summary Judgment Motions. The following facts  
6 are those that are relevant to this motion.  
7

8 3Com Corporation, USEI's predecessor-in-interest, developed  
9 ethernet technology in the 1980s and 1990s. In the early 1990s,  
10 3Com obtained the four patents-in-suit: U.S. Patent Nos. 5,434,872  
11 (the '872 patent) (Apparatus for automatic initiation of data  
12 transmission), 5,732,094 (the '094 patent) (Method for automatic  
13 initiation of data transmission), 5,307,459 (the '459 patent)  
14 (Network adapter with host indication optimization), and 5,299,313  
15 (the '313 patent) (Network interface with host independent buffer  
16 management).  
17

18 On October 9, 2009, USEI filed suit in the Eastern District  
19 of Texas against sixteen computer maker defendants,<sup>1</sup> alleging that  
20 they were manufacturing and selling desktop and laptop computers  
21 which incorporated chips supplied by others that practice certain  
22 ethernet technology, thereby infringing the four patents-in-suit.  
23 That case was subsequently transferred to this district and given  
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25 <sup>1</sup> Acer, Inc., Acer America Corporation, Apple, Inc., ASUS  
26 Computer International, Asustek Computer, Inc., AT&T Services,  
27 Inc., Dell, Inc., Fujitsu Ltd., Fujitsu America, Inc., Gateway,  
Inc., Hewlett Packard Co., Sony Corporation, Sony Corporation of  
America, Sony Electronics, Inc., Toshiba Corporation, Toshiba  
America, Inc., and Toshiba America Information Systems, Inc.

1 Case No. 10-3724. On March 10, 2010, USEI filed a separate suit  
2 in the Eastern District of Texas against retailer Defendants,<sup>2</sup>  
3 alleging infringement of the same four patents-in-suit. That case  
4 was also transferred to this district, and given Case No. 10-5254.

5 In 2011, USEI filed suit against Texas Instruments  
6 Incorporated (TI) in the Eastern District of Texas. Two jury  
7 trials were held in that case. On April 11, 2014, the first jury  
8 returned a verdict that the asserted claims of the '872 and the  
9 '094 patents were not invalid as anticipated by the SONIC prior  
10 art. On June 20, 2014, the second jury found that TI infringed  
11 the asserted claims of the '872 patent and awarded damages to  
12 USEI. On September 19, 2014, judgment was entered in the TI case,  
13 "with the exception of the parties' post-verdict briefing." Pl.'s  
14 Mot. to Alter or Amend, Docket No. 1344, Ex. E.

15 On November 7, 2014, this Court found on summary judgment in  
16 the above-entitled cases that: (1) the asserted claims of the '872  
17 and '094 patents were invalid in view of the SONIC prior art  
18 reference and (2) claims 1 and 13 of the '313 patent were not  
19 infringed by any of the accused products.

20 On November 13, 2014, the Texas court ordered the parties to  
21 brief whether USEI was collaterally estopped from arguing that the  
22 asserted claims of the '872 and '094 patents were valid in the  
23

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25  
26 <sup>2</sup> AT&T, Inc., Barnes & Noble, Inc., Claire's Stores, Inc.,  
27 J.C. Penney Company, Inc., Sally Beauty Holdings, Inc., and Home  
28 Depot U.S.A., Inc.

1 light of this Court's November 7, 2014 Order on Summary Judgment  
2 Motions. Briefing in the Texas court on the applicability of  
3 collateral estoppel ended on December 19, 2014. In the meantime,  
4 this Court entered final judgment against USEI on December 1,  
5 2014.

6 USEI filed the present motion in this Court on December 29,  
7  
8 2014. Briefing on this motion ended on February 2, 2015. On  
9 February 19, 2015, the Eastern District of Texas ruled that, in  
10 the light of this Court's November 7, 2014 order invalidating the  
11 asserted claims of the '872 and '094 patents, USEI was  
12 collaterally estopped from litigating the validity of the '872 and  
13 '094 patents and from recovering infringement damages in the Texas  
14 litigation. See Docket No. 1370. Final judgment in that case was  
15 entered on February 24, 2015.

## LEGAL STANDARD

18       "Rule 59(e) amendments are appropriate if the district court  
19       (1) is presented with newly discovered evidence, (2) committed  
20       clear error or the initial decision was manifestly unjust, or  
21       (3) if there is an intervening change in controlling law." In re  
22       Syncor ERISA Litig., 516 F.3d 1095, 1100 (9th Cir. 2008)(citing  
23       Dixon v. Wallowa County, 336 F.3d 1013, 1022 (9th Cir. 2003)).  
24       Motions for reconsideration are not a substitute for appeal or a  
25       means of attacking some perceived error of the court. See  
26       Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341  
27  
28       (9th Cir. 1980).

## DISCUSSION

## I. Collateral Estoppel

USEI contends that Defendants and Intervenors should be collaterally estopped from litigating the validity of the '872 and '094 patents in this Court.

USEI's motion to alter or amend the judgment based on collateral estoppel is moot. On February 19, 2015, following the completion of briefing on this issue in this Court, the Eastern District of Texas ruled on this question. It held that USEI is collaterally estopped from litigating the validity of the asserted claims of the '872 and '094 patents, and receiving damages, in the light of this Court's December 1, 2014 judgment. See Docket No. 1370. This Court need not decide if collateral estoppel applies to Defendants and Intervenors in this case because the Eastern District of Texas has already decided that collateral estoppel applies to USEI. Accordingly, the Court denies USEI's motion to alter or amend its judgment with regard to the validity of the asserted claims of the '872 and '094 patents.

## II. Non-infringement of the '313 Patent

USEI claims that the Court committed clear error when it found in favor of Defendants and Intervenors with regard to certain infringement claims.

The Ninth Circuit has not articulated a standard as to what constitutes "clear error" in connection with a Rule 59(e) motion for reconsideration. It has, however, defined "clear error" in

1 other contexts, which can provide guidance. For example, the  
2 Ninth Circuit stated that it would only find a trial court's  
3 factual finding "'clearly erroneous' when, although there is  
4 evidence to support it . . . on the entire evidence [it] is left  
5 with the definite and firm conviction that a mistake has been  
6 committed." United States v. Ruiz-Gaxiola, 623 F.3d 684, 693 (9th  
7 Cir. 2010). Thus, the Court will find "clear error" in connection  
8 with a Rule 59(e) motion only when it has the "definite and firm  
9 conviction" that a mistake has been committed. See also Joe Hand  
10 Promotions, Inc. v. Mujadidi, 2012 WL 4901429, at \*1 (N.D. Cal.)  
11 ("[C]lear error should conform to a very exacting standard" by  
12 which "a final judgment must be 'dead wrong' to constitute clear  
13 error"); J & J Sports Prods., Inc. v. Juanillo, 2011 WL 335342, at  
14 \*1 (N.D. Cal.) ("If a court 'got the law right' and 'did not  
15 clearly err in its factual determinations,' then clear error was  
16 not committed -- even if another reasonable judicial body 'would  
17 have arrived at a different result'"); Mitchell v. Asuncion, 2013  
18 WL 2016136, at \*1 (N.D. Cal.) ("A district court does not commit  
19 clear error warranting reconsideration when the question before it  
20 is a debatable one"). The Court now turns to each of USEI's clear  
21 error contentions.  
22

23 A. Non-infringement of claim 13 of the '313 patent based on  
24 the "host interface means" element

25  
26 USEI argues,

27 In this Court's recent summary judgment order, the Court  
28 granted summary judgment for Defendants based on the Court's  
finding that USEI's infringement expert failed to identify

1 required structures for the host interface means element of  
2 claim 13 of the '313 Patent. A necessary premise of the  
3 Court's order is the prior construction of claim 13 to  
4 require certain structures that perform the recited functions  
5 of the element. USEI respectfully requests that the Court  
6 alter its summary judgment ruling because this Court has  
7 never construed the host interface means element of claim 13  
8 to require particular structures. By basing its summary  
9 judgment ruling on the erroneous position that the required  
10 structures of this claim element had been construed, the  
11 Court's judgment for Defendants on this issue is itself  
12 clearly erroneous and should be altered in favor of USEI.

13 Pl.'s Mot. to Alter or Amend, Docket No. 1344-3 at 13. USEI,  
14 however, misstates the basis for this Court's summary judgment  
15 ruling. Contrary to USEI's argument, the Court did not base its  
16 conclusion on "the . . . position that the required structures of  
17 [claim 13 of the '313 patent] had been construed."

18 In its November 7, 2014 Order, the Court stated that finding  
19 literal infringement of a means plus function claim limitation  
20 governed by 35 U.S.C. § 112 ¶ 6 requires that the accused device  
21 perform the identical function recited in the claim, and be  
22 identical or equivalent to the corresponding structure in the  
23 specification. In the prior claim construction order, the Court  
24 identified three functions for the "host interface means" element  
25 in claim 13 of the '313 patent. See Second Claim Construction,  
26 Docket No. 634 at 16. The Court identified separate structures  
27 corresponding to each of the identified functions but found that  
28 "there [is] no single structure that is capable of performing all  
three functions" and noted that the "lack of corresponding  
structure renders Claim 13 of the '313 patent arguably invalid."  
Id. at 17.

1 To prevail on a summary judgment motion, USEI bore the burden  
2 to identify structures in the accused devices that performed each  
3 of the functions identified in this means plus function element.  
4 USEI failed to do so. While USEI contended that the reports of  
5 Dr. Mitzenmacher, its infringement expert, "identify structures in  
6 the accused products that perform the functions recited by the  
7 Court" for this element, the Court found that "the record does not  
8 support USEI's contention." November 7, 2014 Order at 21. In its  
9 motion to alter or amend, USEI again states that Dr. Mitzenmacher  
10 "correctly used his knowledge and skill to identify structures  
11 that perform the recited functions of the host interface means of  
12 claim 13 in his infringement reports." Docket No. 1344 at 14.  
13 However, USEI again fails to show that Dr. Mitzenmacher  
14 specifically identified these structures.  
15

16 In its summary judgment order, the Court did not find it  
17 necessary even to reach the question of whether the structure of  
18 the accused device was identical or equivalent to any  
19 corresponding structure in the patent specification, nor the  
20 question of whether a lack of any such structure in the  
21 specification rendered the means plus function claim at issue  
22 invalid, as the claim construction order had posited.  
23

24 Accordingly, USEI's argument that the Court committed clear  
25 error on this issue is unpersuasive. USEI's motion to alter or  
26 amend the Court's November 7, 2014 Summary Judgment Order on the  
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1 basis of clear error regarding non-infringement of claim 13 of the  
2 '313 patent based on the "host interface means" element is DENIED.

3 B. Non-infringement of claims 1 and 13 of the '313 patent  
4 based on the "network interface means" element

5 USEI argues,

6 The Court also committed clear error in granting summary  
7 judgment of non-infringement of claims 1 and 13 of the '313  
8 Patent based on an erroneous reading of the claim  
9 construction for the network interface means element of both  
10 claims. In construing claims 1 and 13, the Court described  
11 the required structure for the network interface means  
12 element as follows: "In Figure 3, Network interface logic  
13 104, and its equivalents." Defendants argued during summary  
14 judgment that this element required additional structures,  
15 "transmit DMA logic, (generally 109) and receive DMA logic  
16 (generally 110)," because these DMA logic structures are  
17 described in the preferred embodiment of the patent as being  
18 included as sub-components of the network interface logic  
19 104. Because these DMA sub-structures were never required by  
20 the Court's construction, the Court clearly erred both in  
21 agreeing with Defendants' interpretation and subsequently  
22 granting summary judgment for Defendants on this issue.

23 Docket No. 1344-3 at 15.

24 In its second claim construction order, the Court described  
25 the corresponding structures for the "network interface means"  
element of claim 1 and 13 of the '313 patent:

26 The written description of the '313 Patent discloses that the  
27 "network interface logic 104" shown in Fig. 3 "manages  
28 transfers of data from buffers in the independent memory 103  
and the network transceiver 105." ('313 Patent, Col. 9:55-  
59.) The written description further states: The network  
interface logic 104 includes transmit DMA logic, (generally  
109) and receive DMA logic (generally 110). The transmit DMA  
logic 109 is responsive to descriptors stored in the adapter  
memory 103, as described below, for moving data out of the  
independent adapter memory 103 to the network transceiver  
105. Similarly, the receive DMA logic 110 is responsible for  
moving data from the transceiver 105 into the independent  
adapter memory 103.

29 Docket No. 634 at 17. Accordingly, for an accused device to  
30 infringe the "network interface means" of claims 1 and 13 of the  
31

1 '313 patent, it must include "network interface logic 104," which,  
2 in turn, includes "transmit DMA logic" and "receive DMA logic."  
3 Therefore, USEI's contention that the Court's Second Claim  
4 Construction Order did not require structures that included DMA  
5 logic is incorrect.

6 USEI also argues that its infringement expert, Dr.  
7 Mitzenmacher, "properly identified the minimum structure that  
8 would perform network interface logic 104" as it believes it was  
9 construed by the Court. Given the discussion above, this argument  
10 is irrelevant because USEI does not claim that Dr. Mitzenmacher  
11 identified structures that performed the DMA logic.

12 Thus, USEI has failed to show that the Court committed clear  
13 error when it granted summary judgment on this ground in favor of  
14 Defendants and Intervenors. Accordingly, USEI's motion to alter  
15 or amend the Court's November 7, 2014 summary judgment order based  
16 on the "network interface means" element in claims 1 and 13 of the  
17 '313 patent is DENIED.

18 CONCLUSION

19 For the reasons stated above, USEI's motion to alter or amend  
20 the Court's November 7, 2014 Summary Judgment Order (Case No. 10-  
21 3724, Docket No. 1344; Case No. 10-5254, Docket No. 591) is  
22 DENIED.

23 IT IS SO ORDERED.

24 Dated: March 30, 2015

  
25 CLAUDIA WILKEN  
26 United States District Judge

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